Artistan Plastic, Inc. *and* **Millmens Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.** Case 7-CA-21052

2 June 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on 13 August 1982 by Millmens Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, and duly served on Artistan Plastic, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint and notice of hearing on 24 September 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d), and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On 17 November 1982 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on 30 November 1982 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that, unless an answer to the complaint is filed within 10 days of service thereof, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Regional Attorney for Region 7 advised Respondent, by letter dated 27 October 1982, that it had failed to file an answer and that summary judgment would be sought unless an answer to the complaint was filed by 8 November 1982. As noted above, Respondent has failed to file an answer to the complaint and has failed to file a response to the Notice To Show Cause.

Accordingly, under the rules set forth above, no good cause having been shown for failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Michigan corporation with its principal office and place of business in Southfield, Michigan, where it is engaged in the fabrication of countertops, cabinets, furniture, and related products. Respondent until May 1982 also maintained a place of business in Sylvan Lake, Michigan. During the year ending 31 December 1981, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered at its Southfield and Sylvan Lake places of business formica, wood products, and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to said places of business in Southfield and Sylvan Lake, Michigan, and received from other enterprises including, *inter alia*, All American Plywood Company and H. J. Oldenkamp, located in the State of Michigan, each of

which other enterprises had received the said goods and materials delivered to Respondent's facilities directly from points located outside of the State of Michigan.

We find, based on the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Millmens Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the Respondent, but excluding guards and supervisors as defined in the Act.

At all times material since 1965 the Union, by virtue of successive collective-bargaining agreements with Respondent, has been and is now the exclusive collective-bargaining representative of Respondent's employees in the unit described above within the meaning of Section 9(a) of the Act. The collective-bargaining agreement currently in effect between Respondent and the Union provides for, *inter alia*, the remittance by Respondent of payments into certain fringe benefit funds including pension and health and welfare, established for the benefit of employees of signatory employers to said agreement. Since in or about November 1981, and continuing to date, Respondent has failed and refused to bargain with the Union by unilaterally, and without notice to or agreement by the Union, failing to make full and proper fringe benefit contributions pursuant to the collective-bargaining agreement.

Accordingly, we find that Respondent has, since in or about November 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[1]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, we shall order Respondent to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that Respondent make the employees whole by making full and proper contributions on their behalf to certain fringe benefit funds, including pension and health and welfare, as required by the parties' collective-bargaining agreement, which have not been paid and which would have been paid absent Respondent's unlawful unilateral discontinuance of such payments. We shall also order that Respondent pay liquidated damages as provided in the collective-bargaining agreement for Respondent's failure to remit the fringe benefit fund payments. See, generally, *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

CONCLUSIONS OF LAW

1. Artistan Plastic, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Millmens Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for purposes of collective bargaining:

> All production and maintenance employees employed by the Respondent, but excluding guards and supervisors as defined in the Act.

4. By failing and refusing, since in or about November 1981, to bargain collectively with the Union by unilaterally and without notice to and agreement of the Union failing to make full and

[1] The complaint additionally alleges that Respondent violated Sec. 8(a)(1) and (5) of the Act by failing to pay, pursuant to the collective-bargaining agreement, liquidated damages for Respondent's failure to remit fringe benefit fund payments. We find it unnecessary to pass on whether Respondent's failure to remit liquidated damages pursuant to the collective-bargaining agreement in itself constitutes a separate violation of Sec. 8(a)(5) since the payment of the liquidated damages is a part of the remedy herein for Respondent's failure to make the fringe benefit contributions.

proper fringe benefit contributions to certain fringe benefit funds, including pension and health and welfare, pursuant to the parties' collective-bargaining agreement, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the aforesaid conduct, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Artistan Plastic, Inc., Southfield, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain collectively with the Union by unilaterally and without notice to and agreement of the Union failing to make full and proper fringe benefit contributions to certain fringe benefit funds, including pension and health and welfare, pursuant to the parties' collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make its employees whole by making full and proper contributions on their behalf to certain fringe benefit funds, including pension and health and welfare, as required by the parties' collective-bargaining agreement, which have not been paid and which would have been paid absent Respondent's unlawful unilateral discontinuance of such payments and by paying liquidated damages as provided in the collective-bargaining agreement for failure to remit the fringe benefit fund payments.

(b) Post at its Southfield, Michigan, place of business copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent have been taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain collectively with the Union by unilaterally and without notice to and agreement of the Union failing to make full and proper fringe benefit contributions to certain fringe benefit funds, including pension and health and welfare, pursuant to the collective-bargaining agreement between Millmens Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL make our employees whole by making full and proper contributions on their behalf to certain fringe benefit funds, including pension and health and welfare, as required by the collective-bargaining agreement between the Union and us, which have not been paid and which would have been paid absent our unilateral discontinuance of such payments and by paying liquidated damages as provided in the collective-bargaining agreement for failure to remit the fringe benefit fund payments.

ARTISTAN PLASTIC, INC.